



# Oregon

Tina Kotek, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

December 7, 2023

CERTIFIED MAIL: 7014 2120 0001 8302 9712

Vision International Petroleum LLC  
c/o Hai Chheng Gov, Registered Agent  
1212 NE Faloma Road  
Portland, OR 97211

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/UST-NWR-2023-100

This letter is to inform you that DEQ has issued you a total civil penalty of \$10,374 for underground storage tank (UST) violations at your facility in Gresham. DEQ documented numerous violations during its inspection in March 2023. DEQ has cited you for eight violations, including failing to maintain or properly operate release detection equipment; failing to report and investigate a suspected release of fuel; failing to maintain financial responsibility; failing conduct required equipment testing; and failing to provide operator training records; and failing to conduct monthly walkthrough inspections.

DEQ issued this penalty because the facility is out of compliance with many important UST regulations. Proper operation, maintenance and testing of the equipment at the facility is essential to prevent and detect releases of fuel into the environment. Although there was a suspected release of fuel at the facility, you failed to take action by reporting it to DEQ or investigating the release. These actions are necessary to ensure quick and appropriate response to a release before contamination spreads beyond the immediate area of the USTs. Leaking fuel can have lasting harmful effects on the environment and human health. In light of the suspected release, DEQ is especially concerned that the financial responsibility mechanism for the UST system has lapsed.

Included in Section IV of the enclosed Notice is an order requiring you to bring the UST system into compliance by taking the following actions: submit proof of a current financial responsibility mechanism, investigate the suspected release, perform required repairs, maintenance and testing of the UST equipment, and submit proof of Class A/B and C operator training. You must submit documentation demonstrating your compliance to DEQ within thirty (30) days of the Notice becoming final.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov)

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Lauren Dimock, Northwest Region, DEQ  
Mark Drouin, Northwest Region, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:  
4 VISION INTERNATIONAL,  
5 PETROLEUM LLC,  
an Oregon limited liability company,

6 Respondent.

)  
) NOTICE OF CIVIL PENALTY  
) ASSESSMENT AND ORDER

)  
) CASE NO. LQ/UST-NWR-2023-100

7  
8 I. AUTHORITY

9 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
10 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,  
11 ORS 466.706 through 466.882, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR)  
12 Chapter 340, Divisions 011, 012, and 150.

13 II. FINDINGS OF FACT

14 1. At all materials times, Respondent was the permittee of an underground storage tank (UST)  
15 system at the gas station located at 50 NE Burnside Road in Gresham, Multnomah County, Oregon (the  
16 Facility). Respondent operates the UST system under Certificate to Operate #4907.

17 2. The UST system consists of three USTs and connected piping. The UST system has a total  
18 capacity of approximately 36,000 gallons of gasoline and diesel fuel, which are regulated substances.

19 3. On March 29, 2023, DEQ conducted an inspection of the UST system and reviewed  
20 Respondent's records for the UST system.

21 4. On March 29, 2023, there was at least three gallons of fuel accumulated in the under-  
22 dispenser containment (UDC) for each of three dispensers: numbers 1/3, 2/4, and 6/8.

23 5. As of March 29, 2023, Respondent had not reported the suspected release to DEQ.

24 6. As of March 29, 2023, Respondent had not made efforts to investigate or confirm the  
25 suspected release.

26 7. On March 29, 2023, the probe for the diesel tank was not working so that it would not detect  
27 a release of fuel from the diesel tank. The tank gauge alarm indicated that the probe was not functional.

1 8. As of March 29, 2023, Respondent had not tested the overfill and spill prevention  
2 equipment at the Facility.

3 9. On March 29, 2023, Respondent did not provide documentation of compliance with  
4 financial responsibility requirements for the UST system upon request.

5 10. Respondent's coverage under its certificate of insurance expired on September 1, 2023.

6 11. As of the date of this Notice, Respondent has not renewed its insurance or obtained  
7 coverage elsewhere.

8 12. On March 29, 2023, Respondent did not provide training records for the Class A/B or Class  
9 C operators at the Facility upon request.

10 13. As of March 29, 2023, Respondent had not performed monthly walkthrough inspections of  
11 the spill prevention equipment and release detection equipment during the previous year, and Respondent  
12 did not have records of such inspections.

### 13 III. CONCLUSIONS

14 1. Respondent has violated OAR 340-150-0500(1) by failing to report a suspected release of  
15 fuel to three UDCs to DEQ within 24 hours, as alleged in Section II, Paragraphs 4 and 5 above. This is  
16 a Class II violation according to OAR 340-012-0074(2)(a). DEQ hereby assesses an \$850 civil penalty for  
17 this violation.

18 2. Respondent has violated OAR 340-150-0510(1) by failing to immediately initiate  
19 investigation and confirmation of a suspected release of fuel to three UDCs, as alleged in Section II,  
20 Paragraphs 4 and 6 above. This is a Class I violation according to OAR 340-012-0067(1)(a). DEQ hereby  
21 assesses a \$2,200 civil penalty for this violation.

22 3. Respondent has violated OAR 340-150-0400(1)(a) by failing to provide a method of release  
23 detection that can detect a release from any portion of the UST and the underground piping that routinely  
24 contains a regulated substance, as alleged in Section II, Paragraph 7 above. This is a Class I violation  
25 according to OAR 340-012-0067(1)(e). DEQ hereby assesses a \$1,633 civil penalty for this violation.

26 4. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill  
27 prevention and overfill prevention equipment prior to October 1, 2020, as alleged in Section II,

Paragraph 8 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$1,547 civil penalty for this violation.

5. Respondent has violated OAR 340-150-0163(1)(k) by failing to provide information to DEQ about the UST system's compliance with financial responsibility requirements, as alleged in Section II, Paragraph 9 above. This is a Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$300 civil penalty for this violation.

6. Since on or about September 2, 2023, Respondent has violated OAR 340-150-0135(3) and OAR 340-150-0163(1)(i) by failing to continuously maintain a financial responsibility mechanism for the UST system, as alleged in Section II, Paragraph 10 and 11 above. This is a Class I violation according to OAR 340-012-0067(1)(b). DEQ assesses a \$1,956 civil penalty for this violation.

7. Respondent has violated OAR 340-150-0210(10)(b) by failing to provide training records for each Class A/B or Class C operator at the Facility to DEQ upon request, as alleged in Section II, Paragraph 12 above. This is a Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$1,083 civil penalty for this violation.

8. Respondent has violated OAR 340-150-0315(1)(a)(A) by failing to conduct walkthrough inspections of the spill prevention equipment and release detection equipment every thirty (30) days, as alleged in Section II above, Paragraph 13 above. This is a Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses an \$805 civil penalty for this violation.

#### IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO:

1. Pay a total civil penalty of \$10,374. The determination of the civil penalties is attached as Exhibits 1 – 8, which are incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**Department of Environmental Quality**" and sent to: **DEQ - Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

////

2. Comply with Oregon law by taking the following actions within thirty (30) days of this Notice becoming final by operation of law or on appeal:

- a. Repair or replace the probe for the diesel tank;
- b. Complete testing of the spill prevention and overfill prevention equipment;
- c. Submit proof of compliance with Class A/B and Class C operator training requirements;
- d. Investigate the suspected release from the UDCs by scheduling a service provider to visit the Facility. Notify UST Inspector Lauren Dimock (telephone: 503-229-6030) prior to the visit so that she can be present. Ensure that the investigation is conducted according to OAR 340-150-0510, and submit the results of the investigation to DEQ; and
- e. Submit proof of a current valid financial responsibility mechanism.

Documents should be sent to Inspector Lauren Dimock via email at [Lauren.Dimock@deq.oregon.gov](mailto:Lauren.Dimock@deq.oregon.gov).


#### V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

1 Active-duty Service members have a right to stay proceedings under the federal Service  
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
5 Department does not have a toll-free telephone number.

6 If you fail to file a timely request for hearing, the Notice will become a final order by default  
7 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
8 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
9 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
10 the relevant portions of its files, including information submitted by you, as the record for purposes of  
11 proving a prima facie case.

12  
13  
14  
15 12/7/2023  
16 Date

17   
18 Kieran O'Donnell, Manager  
19 Office of Compliance and Enforcement  
20  
21  
22  
23  
24  
25  
26  
27

## EXHIBIT 1

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 1: Failing to report a suspected release to DEQ within 24 hours, in violation OAR 340-150-0500(1).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0074(2)(a).

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10. Respondent had a total of ten Class I violations and four Class I equivalents in the following cases: 2022-FC-7467, LQ/UST-NWR-2019-143, LQ/UST-NWR-2018-284, LQ/UST-NWR-2018-285, LQ/UST-NWR-2014-055, and LQ/UST-NWR-2014-095, which receives a total value of 15 according to OAR 340-012-0145(2)(a)(C) and (D). However, according to OAR 340-012-0145(2)(b), the value of P cannot exceed 10.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. DEQ observed the suspected release on March 29, 2023, and Respondent had taken no action to report the suspected release as of the date of this Notice, which is a duration of more than seven months.

"M" is the mental state of Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. As permitted UST facility, Respondent is aware of the requirement to report suspected releases of petroleum products. DEQ notified Respondent of the reporting requirement during its inspection on March 29, 2023, and again in the Pre-Enforcement Notice issued on June 16, 2023, but Respondent has still not reported the release. By failing to report a suspected release to DEQ, Respondent



consciously disregarded a substantial and unjustifiable risk that it would violate spill prevention requirements. Because of the potential impacts of petroleum releases on human health and the environment, disregarding this risk constituted a gross deviation from the standard of care a reasonable permittee would observe in that situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). Respondent did not report the suspected release to DEQ; it was discovered during an inspection.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ finds that Respondent has not gained any economic benefit from the violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$250 + [(0.1 x \$250) x (10 + 0 + 4 + 8 + 2)] + \$0  
= \$250 + (\$25 x 24) + \$0  
= \$250 + \$600 + \$0  
= \$850

## EXHIBIT 2

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 2: Failing to immediately initiate investigation and confirmation of a suspected release, in violation OAR 340-150-0510(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(a).

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10. Respondent had a total of ten Class I violations and four Class I equivalents in the following cases: 2022-FC-7467, LQ/UST-NWR-2019-143, LQ/UST-NWR-2018-284, LQ/UST-NWR-2018-285, LQ/UST-NWR-2014-055, and LQ/UST-NWR-2014-095, which receives a total value of 15 according to OAR 340-012-0145(2)(a)(C) and (D). However, according to OAR 340-012-0145(2)(b), the value of P cannot exceed 10.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. DEQ observed the suspected release on March 29, 2023, and Respondent had taken no action to investigate the suspected release as of the date of this Notice, which is a duration of more than seven months.

"M" is the mental state of Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. As permitted UST facility, Respondent is aware of the requirement to investigate and clean up releases of petroleum products. During its inspection on March 29, 2023, DEQ documented fuel in the under-dispenser containment for three dispensers, and notified Respondent of the requirement to investigate the release. DEQ also notified Respondent in a Pre-Enforcement Notice issued

on June 16, 2023. However, Respondent has not investigated the release as of the date of this Notice. By failing to investigate a petroleum release at its facility, Respondent consciously disregarded a substantial and unjustifiable risk that a release had occurred. Because of the potential impacts of petroleum releases on human health and the environment, disregarding this risk constituted a gross deviation from the standard of care a reasonable permittee would observe in that situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not investigated the suspected release.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$500. This is the amount Respondent gained by avoiding spending \$750 for containment sump testing and labor to investigate the suspected release. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$500 + [(0.1 \times \$500) \times (10 + 0 + 4 + 8 + 2)] + \$500$   
=  $\$500 + (\$50 \times 24) + \$500$   
=  $\$500 + \$1,200 + \$500$   
=  $\$2,200$

### EXHIBIT 3

#### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 3: Failing to provide a method of release detection that can detect a release from any portion of the UST and the underground piping that routinely contains a regulated substance, in violation of OAR 340-150-0400(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(e).

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10. Respondent had a total of ten Class I violations and four Class I equivalents in the following cases: 2022-FC-7467, LQ/UST-NWR-2019-143, LQ/UST-NWR-2018-284, LQ/UST-NWR-2018-285, LQ/UST-NWR-2014-055, and LQ/UST-NWR-2014-095, which receives a total value of 15 according to OAR 340-012-0145(2)(a)(C) and (D). However, according to OAR 340-012-0145(2)(b), the value of P cannot exceed 10.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(a)(D), because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. The violation has been ongoing since at least November 16, 2021, when DEQ documented the violation.

"M" is the mental state of Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to ensure that release detection equipment was properly installed and functional before DEQ's inspection in March 2023 or after being notified of its noncompliance, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not submitted documentation to DEQ showing that it has repaired or replaced the broken probe.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$133. This is the amount Respondent gained by avoiding spending \$200 to evaluate and repair the probe. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$500 + [(0.1 \times \$500) \times (10 + 0 + 4 + 4 + 2)] + \$133$   
=  $\$500 + (\$50 \times 20) + \$133$   
=  $\$500 + \$1,000 + \$133$   
=  $\$1,633$

## EXHIBIT 4

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION NO. 4                      Failing to initially test spill prevention and overfill prevention equipment by October 1, 2020, in violation of OAR 340-150-0310(10).
- CLASSIFICATION:                      This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
- MAGNITUDE:                      The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA:                      The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP"    is the base penalty, which is \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.
- "P"    is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10. Respondent had a total of ten Class I violations and four Class I equivalents in the following cases: 2022-FC-7467, LQ/UST-NWR-2019-143, LQ/UST-NWR-2018-284, LQ/UST-NWR-2018-285, LQ/UST-NWR-2014-055, and LQ/UST-NWR-2014-095, which receives a total value of 15 according to OAR 340-012-0145(2)(a)(C) and (D). However, according to OAR 340-012-0145(2)(b), the value of P cannot exceed 10.
- "H"    is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O"    is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent failed to conduct testing by a specific date, October 1, 2020.
- "M"    is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. In 2018, DEQ adopted the regulation requiring that the testing be completed prior to October 1, 2020, and provided extensive outreach to the regulated community on the requirement to conduct the testing prior to that date. Respondent

reasonably should have known of the requirement to conduct the testing prior to October 1, 2020.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not completed the testing.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$347. This is the amount Respondent gained by avoiding spending \$625 to conduct spill prevention and overfill prevention equipment testing. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$500 + [(0.1 x \$500) x (10 + 0 + 0 + 2 + 2)] + \$347  
= \$500 + (\$50 x 14) + \$347  
= \$500 + \$700 + \$347  
= \$1,547

## EXHIBIT 5

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 5: Failing to provide information to DEQ about the UST system's compliance with financial responsibility requirements, in violation of OAR 340-150-0163(1)(k).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. Failing to provide financial responsibility documentation to DEQ did not have the potential to result in impacts to the environment or human health, considering that the facility was in compliance with the substantive requirements at the time the violation occurred.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$125 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10. Respondent had a total of ten Class I violations and four Class I equivalents in the following cases: 2022-FC-7467, LQ/UST-NWR-2019-143, LQ/UST-NWR-2018-284, LQ/UST-NWR-2018-285, LQ/UST-NWR-2014-055, and LQ/UST-NWR-2014-095, which receives a total value of 15 according to OAR 340-012-0145(2)(a)(C) and (D). However, according to OAR 340-012-0145(2)(b), the value of P cannot exceed 10.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. The violation occurred during the inspection on March 29, 2023.



"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct ensure that financial responsibility documentation was kept on site, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ finds that Respondent has not gained any economic benefit from the violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$125 + [(0.1 x \$125) x (10 + 0 + 0 + 4 + 0)] + \$0  
= \$125 + (\$12.50 x 14) + \$0  
= \$125 + \$175 + \$0  
= \$300

## EXHIBIT 6

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION 6: Failing to continuously maintain a financial responsibility mechanism for a UST system, in violation of OAR 340-150-0135(3) and OAR 340-150-0163(1)(i).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(b).
- MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10. Respondent had a total of ten Class I violations and four Class I equivalents in the following cases: 2022-FC-7467, LQ/UST-NWR-2019-143, LQ/UST-NWR-2018-284, LQ/UST-NWR-2018-285, LQ/UST-NWR-2014-055, and LQ/UST-NWR-2014-095, which receives a total value of 15 according to OAR 340-012-0145(2)(a)(C) and (D). However, according to OAR 340-012-0145(2)(b), the value of P cannot exceed 10.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(a)(D), because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent's insurance coverage expired on September 1, 2023, and Respondent has not obtained a new financial responsibility mechanism as of the date of this Notice, which is a duration of about three months.
- "M" is the mental state of Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Respondent has previously been cited for this violation, and has had its operating certificate revoked for failing to maintain financial assurance. By failing to ensure that it maintained financial assurance despite knowing that it was required, Respondent consciously disregarded a substantial and

unjustifiable risk that it would violate UST requirements. Considering that there was a suspected release at the facility, continuing to operate without financial assurance created such a high risk that disregarding it constituted a gross deviation from the standard of care a reasonable permittee would observe in that situation.

"C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not submitted documentation to DEQ showing that it has financial assurance in place.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$256. This is the amount Respondent gained by avoiding spending \$391 to maintain financial assurance. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$500 + [(0.1 x \$500) x (10 + 0 + 4 + 8 + 2)] + \$256  
= \$500 + (\$50 x 24) + \$256  
= \$500 + \$1,200 + \$256  
= \$1,956

## EXHIBIT 7

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION NO. 7                      Failing to provide training records for each Class A/B or Class C operator at the Facility to DEQ upon request, in violation of OAR 340-150-0210(10)(b).
- CLASSIFICATION:                      This is a Class II violation pursuant to OAR 340-012-0053(2).
- MAGNITUDE:                      The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA:                      The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP"    is the base penalty, which is \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.
- "P"    is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10. Respondent had a total of ten Class I violations and four Class I equivalents in the following cases: 2022-FC-7467, LQ/UST-NWR-2019-143, LQ/UST-NWR-2018-284, LQ/UST-NWR-2018-285, LQ/UST-NWR-2014-055, and LQ/UST-NWR-2014-095, which receives a total value of 15 according to OAR 340-012-0145(2)(a)(C) and (D). However, according to OAR 340-012-0145(2)(b), the value of P cannot exceed 10.
- "H"    is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O"    is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because the violation has been ongoing for more than 28 days. DEQ documented the violation on March 29, 2023, and it has not been corrected as of the date of this Notice.
- "M"    is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to keep required personnel training records, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not submitted training records for Class A/B or Class C operators at the Facility.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$333. This is the amount Respondent gained by avoiding spending \$500 for operator training. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$250 + [(0.1 \times \$250) \times (10 + 0 + 4 + 4 + 2)] + \$333$   
=  $\$250 + (\$25 \times 20) + \$333$   
=  $\$250 + \$500 + \$333$   
=  $\$1,083$

## EXHIBIT 8

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 8: Failing to perform monthly walkthrough inspections of the spill prevention equipment and release detection equipment, in violation of OAR 340-150-0315(1)(a).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10. Respondent had a total of ten Class I violations and four Class I equivalents in the following cases: 2022-FC-7467, LQ/UST-NWR-2019-143, LQ/UST-NWR-2018-284, LQ/UST-NWR-2018-285, LQ/UST-NWR-2014-055, and LQ/UST-NWR-2014-095, which receives a total value of 15 according to OAR 340-012-0145(2)(a)(C) and (D). However, according to OAR 340-012-0145(2)(b), the value of P cannot exceed 10.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information to make a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent is required to conduct walkthrough inspections on a monthly basis. Respondent did not conduct walkthrough inspections for at least twelve months.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct walkthrough inspections for at least twelve months, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not submitted documentation to DEQ showing that it has begun conducting monthly walkthrough inspections.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$80. This is the amount Respondent gained by avoiding spending \$120 to conduct monthly walkthrough inspections. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (10 + 0 + 3 + 4 + 2)] + \$80 \\ &= \$250 + (\$25 \times 19) + \$80 \\ &= \$250 + \$475 + \$80 \\ &= \$805 \end{aligned}$$